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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,093	11/16/2000	Frank Butaric	CRD-834	5116

7590 06/21/2006

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EXAMINER

MILLER, CHERYL L

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/714,093	BUTARIC ET AL.	
	Examiner	Art Unit	
	Cheryl Miller	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/9/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 23, 2006 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1 and 3-5 have been considered but are moot in view of the new ground(s) of rejection.

The Kim (US 6,270,524) in view of Lombardi (US 6,579,314) and further in view of Freidberg (US 6,699,277) rejection previously applied, has been overcome by the present amendment. In regards to applicant's arguments to the previously applied 103 rejections, that the references taken in combination fail to disclose all limitations of the claim, this is found non-persuasive by the examiner for the reasons below.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 3-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant

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art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Lines 13-15 of claim 1 recite, "each of said plurality of sinusoidal rings having a periodic structure of *less than one-half* of the periodic structure of said plurality of hoops". This is considered new matter, because the applicant has in essence claimed the rings having a size of 0-49.99 % the size of the hoops. Nowhere in the specification does the applicant recite a size covering this entire range. The applicant has attempted to broaden the coverage to more than the applicant has support for in the drawings or specification. Claims 3-5 depend upon claim 1 and inherit all problems associated with the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry et al. (USPN 6,231,598 B1, cited in previous office action) in view of Freidberg et al. (USPN 6,699,277 B1, cited in previous office action). Berry discloses a radially expandable monolithic stent (see figures 15, 16, 17, 18, and 20; col.8, lines 36-39) having proximal and distal open ends and a longitudinal axis between, the stent deployable in a body vessel, the stent comprising a plurality of hoops (14) comprising a plurality of interconnected struts (15, 16, 13) forming a substantially diamond shaped pattern (figs.15, 16, 17, 18, 20), the stent having a proximal (63) and a distal hoop (63'), the end hoops configured to have greater radial and longitudinal strength than the hoops between (col.17, lines 22-25), and the proximal hoop being flared (col.21 line 62-

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col.22 line 8), a plurality of sinusoidal rings (75, 108, 21) connecting adjacent hoops (col.9, lines 1-3; col.10, lines 26-32), the rings (75, 108, 21) being formed from a plurality of alternating struts, the plurality of alternating struts being substantially shorter in length than the plurality of interconnected struts of the plurality of hoops (14), each of the sinusoidal rings having a periodic structure of less than one-half of the periodic structure of the hoops, see figures 15-20, wherein the union of each of the plurality of sinusoidal rings and each of the plurality of hoops is made at the apex of at least one diamond configuration of the plurality of hoops and the apex of at least one intersection of the plurality of alternating struts of the sinusoidal rings (unions 36, 68; see figures 15, 17, 18), wherein the parts of the stent form a monolithic structure (see figures; may have originated from one sheet or tube in the manufacturing process). Berry does not disclose however, *proximal and distal attachment devices* as part of the stent. Freidberg teaches in the same field of radially expandable stents, *proximal and distal attachment devices (51, see figures 11-14) placed on any conventional stent* (col.3, lines 7-14) comprising tabs (52, 57, 59) formed from the joining of two struts (struts on both sides of tab 52, 57, and 59) and having at least two apertures (eyelets, 53, 58, 60) spaced from the end of the stent, *in order to attach a stent (55) to a graft (22), so that restenosis is reduced in the vessel* (col.2, lines 1-5, 59-67; col.8, lines 35-57). It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the stent structure of Berry with Freidberg's teaching of attachment devices and their location, on a stent, in order to attach a graft to a stent, thereby reducing any chance of restenosis in the vessel.

Referring to claims 3-4, Berry discloses a self-expanding stent, made of superelastic nickel titanium (col.8, lines 60-63; col.18, lines 45-62).

Referring to claim 5, Berry discloses an end hoop having a larger diameter than an adjacent hoop (col.22, lines 1-7).


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Miller whose telephone number is (571) 272-4755. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4755. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Cheryl Miller


BRUCE SNOW
PRIMARY EXAMINER